

February 28, 2003

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TO : Interim Directors, Field Operations

FROM : Executive Director, Trade Compliance and Facilitation
Office of Field Operations

SUBJECT: Clarification of Scope Language and Procedures
for U.S. Lumber Products Sent to Canada for Further
Processing and Returned to U.S./ADD-CVD Refunds
(FOR DISSEMINATION TO IMPORTING PUBLIC)

We refer to Headquarters' message 3034202, dated February 2, 2003, concerning clarification of messages 2144201 and 2144202 of May 24, 2002, and Commerce's clarified scope language mentioned in the first referenced message involving U.S. lumber products further processed in Canada and returned to the United States. The pertinent Antidumping Duty (ADD) and Countervailing Duty (CVD) cases are A-122-838 and C-122-839 respectively. The HTS numbers covered by these cases are 4407.10.00, 4409.10.10, 4409.10.20, 4409.10.90, 4418.90.4590, 4421.90.7040 and 4421.90.9740. In this regard, the following procedures will be followed.

1. U.S. Lumber Products Scope Language Clarification by Commerce

As stated in item 2 of Headquarters message 3034202 of February 3, 2003, all softwood lumber products entered in the U.S. for consumption from Canada and claiming exemption from AD and CVD duties based on U.S.-origin goods pursuant to the AD and CVD orders, must meet the following condition:

Upon entry into the United States of the lumber products after undergoing Canadian further processing, the importer must establish to U.S. Customs satisfaction (i.e., by means of the appropriate documentation) that the softwood lumber products entered and documented as U.S.-origin were first produced in the U.S. as a lumber product satisfying the physical parameters of the softwood lumber product scope.

Softwood lumber products (of U.S. origin) imported from Canada after further processing should be classified in the condition as re-imported into the U.S. In addition to the previous three acceptable minor processing operations in Canada, i.e., kiln-drying, planing to create smooth-to-size board and sanding, outlined in above cited messages of May 24, 2002, all other further processing operations in Canada are acceptable for the purpose of maintaining U.S.-origin of the returned lumber product from Canada. In this regard, Commerce has stated that U.S. lumber products that leave the U.S. satisfying the physical parameters of the scope of the AD/CVD orders, is processed in Canada and returns to the U.S. satisfying the physical parameters of the scope of the orders is presumed to be of U.S. origin for purposes of these orders. **Only if raised and documented will the Department of Commerce consider exceptions to this general principle on a case-by-case basis and will inform Customs when an exception should be recognized for purposes of collecting AD/CVD duty deposits and suspending liquidation of particular entries.** Please also note that U.S. lumber products further processed in the Maritime provinces of Canada and then returned to the U.S. are also exempt from AD/CVD duties.

2. Entry Type and HTS Numbers for Entry Summaries Involving U.S. Lumber Products Further Processed in Canada

An importer claiming non-applicability of AD/CVD duties for U.S. lumber products further processed in Canada must file a type code "01" entry with Canada being shown as country of origin, a CA prefix to the NAFTA duty-free rate HTS number (e.g., 4407.10.00). Note that no duty or merchandise processing fee (mpf) is applicable and no ADD/CVD case number data is to be given for an ABI statement entry transmission to Customs. A return electronic message to the filer will state that the entry is accepted by Customs as well as indicate the need for submission of a follow-up paper entry summary for Import Specialist team review. If the importer does not submit the supporting documentation with his paper entry summary at this point, the "01" entry will be rejected for failure to provide documentation to support the claim and the importer will be told to file an "03" entry summary along with payment of AD/CVD duties.

3. Supporting Documents for Valid Claim

For current transactions, the supporting documents on each new shipper, importer, manufacturer, exporter combination are to be filed only with the first entry summary. Thereafter, unless the circumstances and/or shipper, importer, manufacturer, exporter combination have changed, no supporting documents will have to accompany future entry summaries in

this regard. Documents to substantiate the claim will depend on circumstances of the transaction, knowledge of the parties, etc., as appropriate. It is incumbent upon the importer to submit supporting documents to corroborate his claim. An importer cannot bond for these supporting documents as they are utilized to establish the applicability of AD/CVD duties at the time of entry summary filing.

Examples are as follows: U.S. 1st Mill Document, Canadian Processor Declaration, U.S. Processor Declaration, Mill Inventory Reports/Mill Operation Reports and any other documents that the entry filer or Customs deems appropriate.

With respect to all past entries covering only U.S. lumber products further processed in Canada on such entries, the documents above are examples of entry summary supporting documentation that the entry filer may submit to Customs for his retroactive claim (note that one separate set of supporting documents for each shipper, importer, manufacturer, exporter combination is to be submitted).

4. Procedure for Seeking a Refund Payment of AD/CVD Duties

In order to liquidate currently suspended entries covering only alleged U.S. lumber products meeting the requirements set forth in Commerce message 3034202 of February 3, 2003, in addition to providing supporting documents specified by the Import Specialist for a valid claim, the importer must also provide Customs a listing of the specific Customs entries, dates of entry and ports of entry by entry filer for each shipper, importer, manufacturer, exporter combination for liquidation and refund purposes.

In the case of a claim for ADD/CVD refund for past mixed entries covering both exempt and non-exempt lumber products, a separate listing along with supporting documents will also have to be provided for the exempt lumber products by the importer at the time of issuance of a Commerce liquidation suspension removal instruction involving the non-exempt lumber products.

Interest provisions apply to these exempt claims for past entries at the time of liquidation/refunding.

Our Office of Regulations and Rulings (OR&R), Customs Headquarters, has confirmed that there is no legal authority to grant any refunds with respect to these U.S. lumber product claims **prior to liquidation of the entry.**

Questions concerning this issuance should be directed to Mr. Leo Wells,
Other Government Agencies Branch, Customs Headquarters, at
(202) 927-0771.

/s/

Elizabeth G. Durant